

THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BRENDA H. SOLIZ, Individually and as
Representative of the Estate of TOMAS
FLORES SOLIZ, JR.

Plaintiff,

VS.

THE UNITED STATES OF AMERICA,

Defendant.

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CIVIL NO. **SA-16-CV-00370-DAE**

**PLAINTIFF'S RESPONSE IN OPPOSITION TO THE DEFENDANT'S
MOTION FOR LEAVE TO AMEND THE DEFENDANT'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Now comes the Plaintiff, BRENDA H. SOLIZ, in the above and styled cause and files this her Response in Opposition to the Defendant's Motion for Leave to Amend the Defendant's Proposed Findings of Fact and Conclusions of Law, and in such regard would show unto the Court as follows:

Tomas Soliz died from an undiagnosed ruptured cerebral artery aneurysm over four years ago, on March 17, 2015. Prior to the start of the trial on Monday, February 25, 2019, both parties filed their proposed Findings of Fact and Conclusions of Law, in accordance with the Court's Pre-Trial Order. On Thursday afternoon, February 28, 2019, upon conclusion of the evidence, both the Plaintiff and the Defendant rested and closed. Prior to closing the Defendant's attorney **did not** request leave of Court to file Amended or Supplemental Findings of Fact and Conclusions of Law, and **did not** inform the Court that the Defendant intended to make such a request in the near future. **After closing, both the Plaintiff and Defendant waived summation.** At that point the

trial was concluded, and the Court, as the finder of facts, adjourned the trial and retired to deliberate upon the evidence toward reaching a verdict in the case.

Now, for the first time, more than one month into the Court's deliberations on the evidence in this case, the Defendant has filed a Motion to Amend its' proposed Findings of Fact and Conclusions of Law. The Defendant did not file a Motion to Reopen for Additional Evidence. The Defendant's motion is nothing more than an attempt to submit an out of time written summation in order to re-argue selected evidence which it considers favorable to its' defense. Some of these favorable "Facts" are cited to documents which were not admitted into evidence. This motion constitutes an attempt to improperly influence the Court's verdict while the Court's deliberation on the evidence is ongoing. If the Court wanted or needed the parties to submit written summations of the evidence, the Court would have ordered the written summations when the trial was concluded on February 28, 2019, or soon thereafter. The Court has issued no such order. Even though this case was a bench trial, it was still a trial. The Plaintiff is unaware of any Federal Rule of Civil Procedure that permits a party to argue its case to the finder of facts by submitting its selected written summation of the evidence once the finder of facts has begun its deliberations and is more than a month into reviewing the evidence toward reaching a verdict in the case. The Defendant has cited no authority which would allow written summation of selected evidence to be submitted while the evidence is under deliberation, even in a bench trial. Plaintiff objects to the Defendant's Motion to Amend as being illegal, improper and unfairly prejudicial. Tomas Soliz's premature, wrongful death occurred over four years ago. The Plaintiff is entitled to finality and closure of this emotionally painful event, not additional delay in obtaining a

resolution and justice. Accordingly, the Plaintiff requests that the Defendant's Motion to Amend its Proposed Findings of Fact and Conclusions of Law be denied.

WHEREFORE, PREMISIS CONSIDERED, the Plaintiff requests that the Defendant's Motion to Amend its Proposed Findings of Fact and Conclusions of Law, be, in all respects, DENIED, and for such other and further relief, both general and special, at law and in equity, the which the Plaintiff may show herself to be justly entitled.

Respectfully submitted,

LAW OFFICES OF JEFFREY C. ANDERSON

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BY:


JEFFREY C. ANDERSON
STATE BAR NO. 01190500
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, Jeffrey C. Anderson hereby certify that a true and correct copy of the above and foregoing document has been served by the Court's CM/ECF system on this the 3rd day of April 2019 to the following:

Mr. Clayton R. Diedrichs
Ms. Faith Johnson Lowry
Assistant U.S. Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5512


JEFFREY C. ANDERSON